IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6376 OF 1998

Preeteshkumar K. Rathod .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for petitioner

Mr.C.R.Sonawane, A.G.P. for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 18TH OCTOBER 2004.

P.C.

1. Heard Advocates.

2. Petitioner was born in Mumbai and passed S.S.C. examination from a school in Mumbai in 1996. Petitioner was granted caste certificate as belonging to Mahyawanshi schedule caste. As

the petitioner intended to opt for a professional course under reserved category, he applied to respondent No.2 scrutiny ommittee for validation of the caste certificate and submitted documentary evidence as required under the Standing Orders of the State Government. The Scrutiny committee, after considering vigilence report and documentary evidence produced on record, rejected petitioner's caste claim holding that on the date of inclusion of Mahyawanshi as schedule caste the domicile of petitioner's family was not in Maharashtra and, therefore, petitioner is not entitled to get benefit of scheduled caste in the State of Maharashtra. This finding of the scrutiny committee is based on the decision of the Suprme Court in the case of Action Committee on Issue of Caste Certificate to Schedule Castes and Scheduled Tribes in the State of Maharashtra & Ors. Vs. Union of India being W.P.(C) No.898 of 1990, reported in 1994 (5) S.C.C. 244. As far as petitioner is concerned his caste has been classified as scheduled caste vide Presidential Order dated 10th August 1950. Petitioner's father was born in villege Ganghor in Valsad District which is

now Navsari district. Hence, if the date of Presidential Order is taken into account the same will be applicable to then State of Bombay, which includes Valsad district. Petitioner's father would thus be governed on hypothesis that he was resident of then State of Bombay. Bifurcation was brought about on 1st May 1960.

3. In the case of Action Committee on issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India (supra) the Supreme Court has observed thus:-

> "The petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to scheduled castes and scheduled tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other states who have migrated from other states to the State of Maharashtra. These benefits and privileges ae denied on the basis of certain circulars and

letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and scheduled Tribes specified in relation to any other state shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra on 10/8/1950 in the case of scheduled castes and 6/9/1950 in the case of scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The petitioners therefore, contend that the denial of the benefits and the privilege by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles 14, 15, (1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Article 341 and 342 of the Constitution.

The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Tribes, wherever situate, are economically backward, Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their oppressors. Earlier they did not experience any difficulty in obtaining caste/ tribe certificates to secure benefits available to the scheduled castes and scheduled tribes in the State of Maharashtra. The situation however, changed drastically after the Government of India issued a communication addressed to Chief

Secretaries to all State Governments/ Union Territories on 22/3/1977.

6. The Government of India in the Ministry of Home affairs noticed that certificates belonging to a particular scheduled caste/ scheduled tribe were not issued strictly in accordance with the principle governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the authorities concerned. With a view to clarifying the legal position the communication of 22/3/1977 came to be issued. The relevant part of that communication may be reproduced for ready reference:-

> " As required under Articles 341 and 342 of the Constitution, the President has with respect to every state and union territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various castes and tribes as scheduled castes and scheduled tribes in relation

to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific area, which has been assessed to qualify for the scheduled castes or scheduled tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/ Union territories may not both be treated as belong to scheduled caste/ tribe or vice versa. Thus, the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential order Scheduling his caste/ tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential order applicable in this case, say for example, to earn a living or seek education etc. can also be regarded as scheduled caste or a scheduled tribe, as the case may be, if his caste/ tribe has been specified in that order in relation to his state/ union territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/ tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that with a view to ensuing the varacity of permanent residence of a person and that of the Caste/ tribe to which he claims to belong, the Government of India made a special provision in the proforma prescribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated 6/8/1975 indicated the authorities locality wise who should issue the certificate. The communication then proceeds to add:-

> "Thus the Revenue Authority of one district would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/ Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a perticular Presidential Order, has been in a different state/ Union Territory."

> This was emphasized because only the revenue authorities of the locality of which the individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance of the certificate. In regards to persons born after the date of the notification of the relevant Presidential Order, the communication states that the place of residence for the purpose of acquiring scheduled castes or scheduled tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/ tribe."

4. Mr.Mendadkar also brought to our notice that petitioner's sister Ms.Hetal K. Rathod was issued caste validity certificate by the Caste Scrutiny Committee on 14/5/1992. Caste of petitioner cannot be different than caste of his sister. In the circumstances, the order of

Scrutiny Committee is quashed and set aside. Respondent No.2 is directed to grant caste validity certificate in favour of petitioner as belonging to scheduled caste within a period of two months from today.

5. Rule is made absolute accordingly with no order as to costs.

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